

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Amendment of Section 2.106
of the Commission's Rules to
Allocate Spectrum at 2 GHz for
Use by the Mobile-Satellite
Service

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ET Docket 95-18
RM-7927
PP-28

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To: The Commission

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

REPLY COMMENTS OF
AFFILIATED AMERICAN RAILROADS

The Affiliated American Railroads ("AAR"), by their undersigned counsel and pursuant to Section 1.415 of the rules of the Federal Communications Commission ("the Commission"), respectfully submit their Reply Comments in response to the Commission's Further Notice of Proposed Rule Making in the above-captioned proceeding, released March 14, 1997 (hereinafter "Further Notice").

I. THE SUNSET PROVISION SHOULD BE ABANDONED

In their Comments, AAR and others supported the Commission's proposal to require Mobile Satellite Service ("MSS") providers to pay all costs associated with relocating Fixed Service ("FS") incumbents to comparable facilities in cases where frequency sharing between the services is not feasible.^{1/} AAR opposed, however, the establishment of a ten-year sunset on the MSS providers' obligations to pay the costs

^{1/} AAR Comments at 5-6; APCO Comments at 3-4; UTC Comments at 4; API Comments at 5; and State of California Comments at 3.

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of an incumbent's relocation, arguing that the sunset provision was not only contrary to the Commission's stated goal of making FS incumbents whole after relocation, but would actually discourage MSS/FS frequency sharing.^{2/} Predictably, the MSS Coalition urged the Commission to impose an even shorter sunset period in an attempt to avoid responsibility for relocating displaced FS incumbents.^{3/} The Coalition's request betrays the desire of its members to have their cake and eat it too. On the one hand, Coalition members insist that the development of relocation payment rules are unnecessary, as well as counterproductive, because MSS/FS frequency sharing is feasible. On the other hand, the MSS proponents continue to seek limitations on the scope and duration of their obligations to FS incumbents, suggesting that sharing between the two services is not expected to last very long, if at all.

The Coalition cannot have it both ways. If MSS/FS sharing is feasible, there should be no need to impose any sunset on MSS relocation obligations. However, if MSS/FS sharing is not feasible, it would be manifestly unfair to FS incumbents, and would undermine the Commission's policy of encouraging spectrum sharing, to sunset the obligations of MSS providers to displaced FS users.

Accordingly, the Commission should abandon the sunset concept altogether and simply require MSS providers to relocate FS incumbents whenever sharing between the two services is not feasible. To encourage MSS/FS sharing, the

^{2/} See AAR Comments at 6-8; CONVOCOM Comments at 3; APCO Comments at 7; and API Comments at 9-10.

^{3/} MSS Coalition Comments at 7-9.

Commission should adopt the regulatory proposal set forth in AAR's Comments;^{4/} specifically, FS incumbents should retain their co-primary status indefinitely and should be required to relocate to another band (at the expense of the MSS operator) only when it has been established that interference-free sharing (in both directions)^{5/} involving a particular FS facility is not feasible.

II. FS RELOCATION SHOULD OCCUR BASED ON EXPECTED, NOT ACTUAL, INTERFERENCE

In the First Report and Order, the Commission decided that it would not require the relocation of FS incumbents "unless and until the incumbents will receive harmful interference from, or cause harmful interference to," MSS operators.^{6/} The Commission further decided that "MSS cannot begin operations until its spectrum is cleared of all FS licensees who would receive harmful interference from MSS. . . ."^{7/} The Commission's decision indicates that MSS providers are obligated to relocate FS incumbents whenever they are expected to receive or cause harmful interference, and that such relocation must be completed before actual interference occurs.

In its Comments, the MSS Coalition fundamentally mischaracterizes the Commission's decision on MSS obligations in the apparent hope of securing drastic reductions in the sunset and negotiation periods. The Coalition states that the

^{4/} AAR Comments at 8.

^{5/} Potential interference between FS and MSS systems can occur in two directions: from the MSS Satellite downlink into FS receivers and from FS transmitters into the MSS mobile earth station receivers.

^{6/} First Report and Order, ¶ 42 (emphasis added).

^{7/} Id. (emphasis added).

Commission "will not require relocation of incumbent FS licensees unless and until the incumbents receive harmful interference from or cause harmful interference to new services."^{8/} In another passage, the Coalition concludes "if [FS relocation is] required - - and we believe it should not be -- any [negotiating] period must begin once an FS operator has made a showing of actual harmful interference."^{9/} The Coalition argues that the sunset and negotiation periods must be shortened considerably; otherwise, the requirements of FS relocation will "cripple" the ability of MSS operators to expand their systems to meet rapid growths in consumer demand.^{10/}

The Coalition's misunderstanding of the circumstances under which MSS relocation obligations would arise reveals a total ignorance of the operational requirements and constraints of FS users. By definition, "harmful interference" involves the serious disruption of, or obstruction to, a radio service.^{11/} If the obligation to relocate FS incumbents does not arise until a after showing has been made that harmful interference has actually occurred, then entities engaged in public safety functions (such as police, fire and other emergency services) and quasi-public safety functions (such as railroad, pipelines, and utilities)^{12/} must necessarily subject

8/ MSS Comments at fn. 18 (emphasis added).

9/ Id. at fn. 36 (emphasis added).

10/ Id. at 14.

11/ See 47 C.F.R. § 2.1 (1996); ITU Radio Regulations, RR 163 (S1.169).

12/ See, Private Land Mobile Radio Services, Second Report and Order in PR Docket No. 92-235, FCC 97-61, released March 12, 1997, at paragraphs 41-42.

themselves to actual instances of serious disruption and obstruction of their vital FS communication links before MSS operators would have any responsibility to even begin the process of negotiating the relocation of the FS facilities.

Such an outcome would be absurd, dangerous and contrary to all principles of sound spectrum management. The approach suggested by the Coalition would obviously endanger public safety, and the Commission should expressly reject it for that reason alone. Further, the notion that the Commission should allow actual harmful interference to occur before any remedial action is taken flies in the face of the most basic principles of spectrum management. Indeed, the very foundation of the international regulatory regime of spectrum management is to prevent harmful interference from occurring^{13/} by means of predictive technical analysis, frequency coordination procedures and other means. In keeping with such principles, the Commission should make it clear that the relocation obligations of MSS providers will arise whenever harmful interference is expected to occur, not after it actually occurs.

III. CONCLUSION

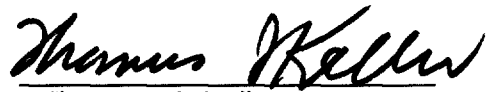
For the foregoing reasons and for the reasons set forth in AAR's Comments filed on June 23, 1997, the railroad industry urges the Commission to abandon its proposed ten-year sunset on the obligation of MSS providers to pay for the relocation

^{13/} The ITU Constitution requires that all stations be established and operated "in such a manner as not to cause harmful interference" Article 45, Section 1, ITU Constitution (Final Acts, Geneva, 1992).

of displaced FS incumbents, and to make clear that such obligations are to be based on the expectation of harmful interference, not its actual occurrence.

Respectfully submitted,

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Dated: July 21, 1997

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